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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 27

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, ET AL., *Petitioners*,

v.

EDDIE WITTSTEIN, ET AL., *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR PETITIONERS

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 122-139) is reported at 223 F. Supp. 27. The majority and minority opinions of the Court of Appeals for the Second Circuit (R. 180-191) are reported at 326 F. 2d 26.

JURISDICTION

The judgment of the Court of Appeals was entered on December 18, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1). This Court granted certiorari on March 9, 1964 (R. 194). 376 U.S. 942.

QUESTIONS PRESENTED

1. Does § 101(a)(3)(B) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. § 411(a)(3)(B)) forbid an international union from raising membership dues by a convention vote of delegates based upon the number of members they represent?

2. If § 101(a)(3)(B) so forbids, does it to that extent violate the First Amendment?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves § 101(a)(3)(B) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, *et seq.*, 29 U.S.C. §§ 401 *et seq.* and the First Amendment to the United States Constitution. These are reprinted in Appendix A *infra*.

STATEMENT OF THE CASE

A. The Factual Background

Petitioner American Federation of Musicians (AFL-CIO) is an international union comprising 675 local unions in the United States and Canada with a total membership, in June 1963, of approximately 280,000 (R. 46). Petitioner Local 802 is the largest local affiliate of AFM and has approximately 28,000 members. Many locals have less than 1% of Local 802's

membership. (Official Proceedings of the 1963 Convention, Ex. B. to Scola Affidavit, pp. 7-30, hereafter cited as "Proceedings".)[1]

The representation of locals at conventions is governed by Article 5 of the Federation's Constitution.[2] Each local is entitled to one delegate for each 100 members, or major fraction thereof, but not to exceed three delegates for any one local. Upon the request of "ten delegates or five locals" there must be a roll-call vote on questions affecting a change of the constitution or bylaws; in such a vote "each Local may cast as many votes as it has members".

For example, Local 802, with 28,438 members, or 10% of the Federation's total membership, had the right to send three delegates to the June 1963 Convention,[3] and was entitled, on a roll-call vote, to cast 28,438

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[1] These Proceedings are in the full record which has been filed with the Clerk.

[2] "All Locals of this Federation of one hundred and fifty members or less shall be entitled to one delegate. All Locals shall be entitled to one delegate for each one hundred members or a major fraction thereof, not exceeding three delegates for any one Local, but each Local shall be entitled to one vote for each one hundred or major fraction thereof, but no Local shall cast more than ten votes, and the number each Local is entitled to shall be computed from the last report made on January 1st before the convention by the Local, according to the books of the Treasurer. On questions affecting a change in the laws, each Local may, upon roll call, cast as many votes as it has members, as per book of the Treasurer, A. F. of M. All laws so passed shall be referred to a convention committee consisting of the Executive Board, A. F. of M., and chairmen of all committees, who may sanction or veto same, their action to be final. Roll call shall be demandable and had under this Article on demand of ten delegates or five Locals." (R. 126)

[3] For reasons that do not appear in the record, only two delegates were present from Local 802.

votes, or 10% of the total eligible vote. Local 46, with 276 members, or .1% of the total membership, likewise could send three delegates, but on a roll-call vote, was entitled to cast 276 votes or .1% of the total eligible vote.

The June 1963 Convention was chiefly concerned with replacing the Federation's historic method of raising its major revenues. That method, a "tax" based on the earnings of traveling members, had been the subject of extensive controversy and litigation.[4] The proposed substitute known as "Recommendation No. 11" (R. 57-59), provided, in pertinent part, that effective January 1, 1964:

> "1. The Federation shall not impose dues based upon earnings of members ('taxes'). Such amendment shall apply to the 10% Traveling Surcharge Tax, the 15% Radio and Television Tax and the Theatre Defense Fund Taxes.
>
> "2. (a) Annual Federation Per Capita Dues payable by Locals to the Federation shall be $6.00 (inclusive of the Per Capita contribution for the Official Journal and the Lester Petrillo Fund).
>
> * * *
>
> "3. Federation Initiation Fees shall be as follows:
>
> If the Local Initiation Fee is $10.00 or less, the Federation Initiation Fee shall be an additional $4.00.
>
> * * *
>
> "4. Each Local shall maintain Local regular periodic dues at no less than the rates existing on June 1, 1963, plus $6.00 per annum. Such rates

[4] See *Cutler* v. *AFM*, 316 F. 2d 546 (CA 2), *cert. denied*, 375 U.S. 941, December 9, 1963. Serious questions had been raised within the Federation as to the fairness of this method of raising revenues for the Federation and its locals.

may be reduced with the consent of the International Executive Board."

After two voice votes on Recommendation No. 11, the Chairman announced that he could not make a decision, stating that "the ayes and nayes appear to be of equal response" (R. 60).

A delegate, speaking on behalf of five locals, then requested a roll-call vote (R. 60), pursuant to Article 5 of the Constitution. A roll-call vote was thereupon taken with the delegates of each local casting as many votes as the locals had members.[5] Where the delegates from a local were in disagreement, this weighted vote method gave each delegate a proportion of the votes to which the local was entitled.[6] The result of the vote was, yes: 158,068 2/3, no: 113,742 1/3. (R. 61). Recommendation No. 11 was thereby adopted pursuant to Article 5 of the Federation's Constitution. On the roll call less than one half of the delegates present and voting voted in favor of the Recommendation.

B. The Proceedings in the Courts Below

1. The District Court

On August 14, 1963 Julius Schwartz and others brought suit to enjoin petitioner Local 802 from enforcing the increase of membership dues pursuant to

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[5] For example, local No. 1 cast 1,115 votes "yes" (Proceedings, p. 58).

[6] For example, Local No. 29 was entitled to 368 votes; two delegates favored and one opposed the resolution. Thus, the votes were cast yes: 245 1/3, no: 122 2/3 (Proceedings, p. 58).

Recommendation No. 11. (R.3-24).[7] On August 23, 1963 Eddie Wittstein and others brought suit against petitioner Federation to declare Recommendation No. 11 null and void and to enjoin the Federation from putting it into effect. The complaints alleged, *inter alia*, that the method by which Recommendation No. 11 was adopted violated § 101(a)(3)(B) of the Labor-Management Reporting and Disclosure Act of 1959, (73 Stat. 519 *et seq.*, 29 U.S.C. § 401 *et seq.*, hereafter referred to as "the Act"). On motion of defendants the cases were consolidated.

Defendants moved for summary judgment, filing affidavits in support of the motion; plaintiffs filed affidavits in opposition.

On October 28, 1963 the District Court (Levet, J.) filed his Opinion, Findings of Fact and Conclusions of Law (R. 122-139). The District Court found that there was "no material issue of fact" regarding the manner, described above, by which Recommendation No. 11 was enacted. (R. 131-132). The Court then considered whether this method of raising membership dues was lawful and concluded "that the convention failed to comply with the mandatory provisions of Title 29 U.S.C. § 411(a)(3)(B)(i) [§ 101 (a)(3)(B)(i) of the Act] and that as a result I am forced to declare the action increasing dues to be void." (R. 138).

The Court thereupon granted judgment to plaintiffs in both actions "declaring that that portion of Recommendation No. 11 increasing the per capita dues of Federation members was invalidly enacted under 29

[7] The Schwartz complaint stated an additional claim which was ultimately dismissed and is not relevant to the issues before this Court. The allegations presently involved are stated in the "Second Separate and Distinct Claim" (R. 14-22).

U.S.C. § 411(a)(3)(B)(i)", and enjoining the defendants from carrying the same into effect.[8] Judgment was entered in *Wittstein* on October 30, 1963 (R. 143-144) and in *Schwartz* on November 1, 1963 (R. 140-141).[9] On the same dates, the respective defendants filed notices of appeal.

2. The Court of Appeals

The appeal was expedited in the Court of Appeals, argument being held on November 20, 1963, before Judges Medina, Waterman and Marshall. On December 18, the Court by a 2-1 vote affirmed the judgment of the District Court.

The Court held that the procedure by which the roll-call vote was taken was proper and, indeed, required under the union's by-laws. It further agreed with the unions that

> "the weighted voting is to all appearances the most 'democratic' method, in the sense that each

[8] Subsequently, the District Court entered an order of clarification (not included in the present record) which explained that it was enjoining only the collection of dues and initiation fees from members pursuant to Recommendation No. 11, but was not invalidating the provision that each local must pay $6.00 annually to the Federation for each member of the local, because the Act does not deal with payments from local unions to internationals. Cf. *Ramos* v. *Office Employees*, 317 F. 2d 915 (CA 7).

At its June 1964 Convention, the Federation passed by overwhelming voice vote a resolution re-enacting the dues and initiation fee increases effective July 1, 1964. The outcome of this case will determine the legality of the increase for the period of January 1 through June 30, 1964, as well as the legality of the voting procedure for future conventions.

[9] In the *Schwartz* action the Court certified under Fed. R. Civ. P. 54 (b) that final judgment could be entered on this cause of action although no judgment had been entered with regard to the other, unrelated, cause of action.

> member is duly 'represented,' and it is a method of voting widely recognized as fair and proper by a number of unions. Not only are similar provisions to be found, with some variations of detail, in many representative union constitutions or by-laws, but it may fairly be said that the passage of the Labor-Management Reporting and Disclosure Act of 1959 was not brought about by any abuses found to have flourished under the aegis of the weighted voting system." (R. 184-185).

The Court then stated what it took to be "the simple central issue":

> "in the context of section 101(a)(3)(B), 29 U.S.C., Section 411(a)(3)(B), do the words 'by majority vote of the delegates voting at a regular convention' mean one vote for each delegate?" (R. 185).

This question was then answered in the affirmative:

> "As we are unable to perceive any other meaning attributable to the phrase, we hold: that each delegate at the 1963 Convention was entitled to one vote, no more, no less; that the resolution as passed was void, as violative of the plain requirements of the Act; and that the judgments appealed from must be affirmed." (*id.*)

On December 23, Judge Marshall filed his dissenting opinion, (R. 187-191). He disagreed with "the conclusion that the words 'by majority vote of the delegates voting' were intended and must be construed to invalidate this common and concededly fair method of delegate voting at union conventions." (R. 187). His own conclusions, based on a thorough analysis of the legislative history, were stated as follows:

> "It seems to me clear that Congress intended merely to assure that dues increases could not be imposed by irresponsible or arbitrary union

leaders not answerable in any way to the membership at large. It did not set out to dictate to unions a particular method for voting by delegates at national conventions, and, especially, did not have any desire to foreclose national unions from giving more weight to their larger locals on this question. Under the majority's interpretation of this provision, the only way a national union could do this, and still give even small locals at least one delegate, would often be to increase the number of delegates and the expense of holding conventions, out of all manageable proportions. * * *

"In summary, then, I am most reluctant to employ the 'plain meaning' rule here as a means of preventing the use of a perfectly normal and accepted means of voting at union conventions, especially since there is no evidence that Congress felt this method was subject to any abuse whatsoever. It is noteworthy that none of the Congressmen and Senators who discussed the bill ever adverted to this problem, or indicated in any way that a change in the practice was desirable. The same is true of the many commentators who have exhaustively analyzed the provisions of the Act, from every possible standpoint. The term 'majority vote of the delegates voting' is susceptible to a construction which would allow delegates' votes to be weighed in accordance with the strength of the different locals they represent. We ought to accept that construction, and reverse the summary judgment herein." (R. 190-191).

SUMMARY OF ARGUMENT

I.

Section 101(a)(3)(B)(i) of the Act provides that an international union may raise minimum membership dues "by majority vote of the delegates voting at a regular convention * * *." The Court of Appeals held that Congress by this language decreed that international unions could lawfully raise dues only if each delegate had "one vote, no more, no less". (R. 185) It thereby outlawed the practice of many unions to weight the vote of delegates in proportion to the number of members they represent. This result is contrary to the language of § 101(a)(3)(B)(i), its legislative history and the evidence from other provisions of the statute, and defeats the statute's universally conceded objective to promote union democracy.

A. The roll-call vote by which the AFM adopted Recommendation No. 11 complied quite precisely with § 101(a)(3)(B)(i): It was a "majority vote"—more than one-half of the total 271,811 votes cast were in favor of Recommendation No. 11; the "vote" was that "of the delegates" who were "voting at a regular convention."

The court below treated the phrase "a majority vote of the delegates voting" as if "majority" modified "delegates." This reading renders the word "vote" entirely superfluous. The court's construction would be the more natural only if the Act had been worded "a majority of the delegates voting * * *." Petitioners' view—that Congress authorized unions to adopt their own form of vote, requiring only that a majority of the votes be cast in favor of the increase—gives full effect to all the words. "Vote" describes what is to be counted to determine a majority; "of the dele-

gates" describes who is to cast the votes. Thus, Congress mandated that the votes may be cast only by delegates and that a majority of those votes must be in favor of the dues increase. But just as Congress left each union free to determine by its bylaws the number of convention delegates, so did it allow them to determine the number of votes those delegates could cast. If Congress had desired to enact the strict formula—one delegate, one vote—it could readily have said so by providing that "each delegate shall be entitled to one vote." Compare § 401(e) which requires that in certain union elections "each member shall be entitled to one vote."

B. Section 101(a)(3) is part of Title I of the Act's "Bill of Rights of Members of Labor Organizations". No bill of rights was in the bill reported to the floor by the Senate Labor Committee, but such a provision was adopted by the Senate on an amendment by Senator McClellan. The Senate thereafter adopted a substitute Title I which had been offered by Senator Kuchel and passed the bill with § 101 (a)(3) of Senator Kuchel's substitute regulating the increase of membership dues.

When the Senate bill was considered by a Joint Subcommittee of the House Committee on Education and Labor, AFL-CIO President George Meany criticized the Bill of Rights provision because of its excessive regulation of internal union affairs. He expressly objected that § 101(a)(3) of S. 1555, if read literally, would have prevented international unions from changing dues by mail ballot referendum. He added that,

> "* * * actually we do not think that the Senate really meant to bar international unions from following this procedure. * * * If we are correct in this assumption, as to what the Congress wanted,

> Section 101(a)(3) actually permits changes in dues by every method which unions generally employ except action by a general executive board or similar body. * * *"

He then urged that the House amend the bill to permit international executive boards to raise union dues, where authorized by their union bylaws. President Meany's statement that the Senate bill would not forbid any of the accepted methods of raising dues except by the international executive board was not disputed by anyone, including Senator McClellan, its sponsor, who replied in detail to President Meany's criticism of Title I. The committee responded fully to President Meany's criticism by providing in the bill it referred to the House that dues could be increased by referendum [§ 101(a)(3)(B)(ii)] and by international executive boards, if authorized by their bylaws, until the next convention [§ 101(a)(3)(B)(iii)]. The committee's action demonstrates that it desired the widest latitude for unions to prescribe their own rules for raising dues as long as they allowed membership participation. It makes no sense whatsoever to assume that the House committee would permit dues increases to be made by an executive board but not by a convention vote at which all members were fairly represented.

Because § 101(a)(3) of all three bills which were considered on the House floor contained identical language—incorporating the changes urged by President Meany—it was only briefly mentioned in floor debate. Representative Griffin observed generally that it "guarantees to union members, subject to reasonable rules and regulations, * * * that their dues and intiation fees will not be increased arbitrarily * * *."

This history confirms the view of dissenting Judge Marshall, "that Congress intended merely to insure that dues increases could not be imposed by irresponsible or arbitrary union leaders not answerable in any way to the membership at large" (R. 190). As the Seventh Circuit said,

> "The protection of the rights of union members is the purpose of 101(a)(3). Unless the provisions of subsection (B) are meaningless, Congress has said that that purpose is served when union members have representation at the council table where dues structures are changed." *Raines* v. *Office Employees,* 317 F. 2d 915, 918.

The majority of the Court of Appeals pointed to nothing in the legislative history to suggest a broader purpose. Nor could it have done so. There is not a word in the legislative history which even remotely suggests that any person considered that weighted voting at conventions was an evil. Indeed, the legislative history demonstrates that Senator McClellan, the sponsor of Title I and the author of the language which became § 101(a)(3) of the Act, believed that weighted voting in international conventions was the most desirable system. On the basis of his committee's investigations, he believed that legislation "designed to insure fair and equal representation of constituent units" was necessary. Accordingly, Section 104(2) of S. 1137, the bill which he originally introduced, would have *required* that the voting strength of convention delegates be proportionate to the size of their constituency. It is unthinkable that Senator McClellan, a prime mover behind the enactment of § 101(a)(3), would have intended thereby to *forbid* the weighted voting which he believed to be the most desirable procedure.

C. The Court of Appeals' construction attributes to Congress a legislative purpose inconsistent with the other provisions of the Act. Although § 101(a)(1) guarantees members equal rights regarding many internal political procedures, § 101(a)(3) as construed below would prohibit equality of representation in an international convention, the highest legislative council of the union. Equality of members would thereby be sacrificed to achieve equality of delegates, although every word of Title I—including its heading—proclaims that Congress was solely concerned with protecting the rights of members as members and not as delegates or officers or employees.

In Title IV of the Act, which contains minute regulations of elections of union officers, Congress permitted election of officers at union conventions by weighted voting. Section 401(f) requires only that "the convention shall be conducted in accordance with the constitution and bylaws of the labor organizations insofar as they are not inconsistent with the provisions of this Title." The Secretary of Labor, who is charged with the administration of Title IV, has interpreted it as leaving unions free to determine their own systems of representation at conventions. Congress was well aware that these systems included weighted voting at conventions. Among the sources considered in drafting Title IV were studies describing in detail union election procedures, including weighted voting.

The court below plainly erred in stating that Title IV was irrelevant in construing Title I. The text and history of the statute show that Congress was particularly concerned with union elections, and closely regulated them. It cannot be assumed that Congress, having allowed weighed voting in union elections, prohibited

such voting for raising dues in a provision which was designed only to assure membership participation.

D. The Court below acknowledged that the purpose of the Act was "to insure union democracy and that the intended beneficiary of the provisions of the Act is the union member." And it conceded that the Federation's method of weighted voting "is to all appearances the most democratic method since each member is duly represented" and is a method widely recognized as fair and proper by a number of unions." The court further conceded that the statute was not enacted because of any abuses found under the weighted voting system. The court's only effort to justify its decision in the face of those concessions was its totally unsupported statement that "Congress intended to prevent future skulduggery of every possible character in the fertile field of increasing dues". This assertion was mere speculation. The dissenting Judge could

> "find no support for the majority's suggestion that dues increases are a particularly 'fertile field' for 'skulduggery,' to which an especially strict standard should be applied." (R. 188)

The decision below conflicts not only with the objective of the statute to promote union democracy but also with the closely related objective to preserve established union procedures and practices as far as possible. Congress interfered with the existing union bylaws only where demonstrated past abuses established a compelling need. For, as recognized in the testimony of Secretary of Labor Mitchell and others, these union rules are the product of the very self-government which the Act is designed to foster.

II.

Under the decision below, union members are forbidden to raise their own dues by a procedure which, in the Court of Appeals' own words, "is to all appearances the most democratic method, in the sense that each member is duly represented." As so construed, § 101(a)(3)(B)(i) constitutes an unprecedented interference with the self-government of union members in violation of the members' rights to free association as guaranteed by the First Amendment.

It is now entirely beyond dispute that the freedom of assembly protected by the First Amendment encompasses the right of association. This, of course, includes the right of workers to form labor unions. *Railroad Trainmen* v. *Virginia Bar*, 377 U.S. 1, 8; *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U.S. 261, 265. Since an organization without rules is a mere mob, the right of self-organization must mean that those who join in common cause *themselves* prescribe the rules by which their organization exists and functions. If Government had unfettered power to fix the rules by which organizations may make decisions it could control the substance of those decisions and paralyze the organization. This Court has recognized that freedom of religion implies the right of self-government of religious organizations. *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, 116, reaffirming *Watson* v. *Jones*, 13 Wall. 679. Freedom to join other private associations likewise encompasses the right of self-government.

While future cases may require a balance between the right of free association and the public interest in regulation of internal union affairs, the constitutional

question here is much simpler. For, as construed by the court below, § 101(a)(3)(B)(i) outlaws long-recognized union procedures without advancing any legislative purpose. This Court has repeatedly held that government may encroach on personal liberties such as freedom of association "only upon showing a subordinating interest which is compelling." *Bates* v. *Little Rock*, 361 U.S. 516, 524. See also, *N.A.A.C.P.* v. *Alabama*, 377 U.S. 288 and cases cited *id.* at 307-308. Even if § 101(a)(3) may constitutionally be applied to prohibit the raising of dues without any membership participation, it cannot constitutionally forbid a system which allows such participation and which is concededly democratic.

ARGUMENT

I. THE FEDERATION'S 1963 CONVENTION COMPLIED WITH § 101(a) (3).

A. The Language of § 101(a)(3)(B)(i) Does Not Forbid Weighted Voting in Conventions.

Section 101(a)(3) of the Labor-Management Reporting and Disclosure Act of 1959 prescribes the procedures by which labor organizations[10] may raise minimum dues and other assessments payable by members. § 101(a)(3)(A) sets forth the methods available to a local labor organization. The permissible methods by which an international union may raise minimum membership dues (payable to its locals or directly to itself) are enumerated in § 101(a)(3)(B) as follows:

> "(i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or
>
> (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or
>
> (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization."

[10] Section 101(a)(3) excepts "a federation of national or international labor organizations" such as the AFL-CIO.

The legality of the roll-call vote by which the 1963 international convention raised the minimum dues payable by Federation members to their locals must, of course, be determined under (i). Specifically, the question is whether § 101(a)(3)(B)(i) permits international conventions to raise minimum membership dues by a vote in which the voting strength of each delegate is based on the number of members he represents. Relying exclusively on the language of § 101(a)(3)(B)(i) the Court of Appeals answered this question in the negative:

> "As we are unable to perceive any other meaning attributable to the phrase, we hold: that each delegate at the 1963 Convention was entitled to one vote, no more, no less; that the resolution as passed is void, as violative of the plain requirements of the Act". (R. 185).

The conclusion of the Court of Appeals that one delegate, one vote, is the only formula permitted by § 101(a)(3)(B)(i) was not supported by analysis of its language. There was no discussion of the meaning of the individual words or of the grammatical construction of the phrase. Nor did the Court consider the possibility—which we submit represents the congressional will—that the form of vote be determined by the union bylaws, so that "one delegate, one vote" is merely one of several permissible methods of voting. Indeed, while the language is not free from ambiguity and while, in any event, statutes cannot be properly construed merely by inspecting the words of a single phrase, a careful examination of the text reveals that the roll-call vote complied quite precisely with § 101(a)(3)(B)(i) ("a majority vote of the delegates voting at a regular convention . . ."). It was a "majority vote"—more than one half of the total 271,811 votes cast were in favor

of Recommendation No. 11; the "vote" was that "of the delegates" who were "voting at a regular convention".

A technical parsing of the text would require the identification of the noun which is modified by the adjective "majority". The Court below treated the phrase as if "majority" modifies "delegates", a reading which renders the word "vote" entirely superfluous. The Court's construction would be the more natural only if the Act had been worded "a majority of the delegates voting * * *". Our view, by contrast, gives full effect to both the word "vote" and the phrase "of the delegates". "Vote" describes what is to be counted to determine a majority. "Of the delegates" describes who is to cast the votes. Thus, Congress mandated that the votes at an International convention may be cast only by delegates and that a majority of those votes must be in favor of the dues increase. But just as Congress left each union free to determine by its bylaws the number and qualification of convention delegates, so did it allow them to determine the number of votes those delegates could cast.

This construction "imputes to Congress a surer grammatical touch than does the alternative interpretation" (Cf. *Flora* v. *United States*, 362 U.S. 145, 150), for it gives the word "vote" full effect. "This Court naturally does not review congressional enactments as a panel of grammarians; but neither [does it] regard ordinary principles of English prose as irrelevant to a construction of those enactments". *Id.* The Court below was thus plainly shortsighted when it was "unable to perceive any other meaning attributable to the phrase". (R. 185). If the Court had analyzed the language more carefully, it would have seen that a

reading which permits weighted voting is not only possible, but grammatically preferable. If the Congress had desired to enact the rigorous formula that "each delegate was entitled to one vote, no more, no less" it could readily have said so by providing that "each delegate shall be entitled to one vote". That is the language which it used in § 401(e), when it provided that in elections required to be by secret ballot[11] of the membership "each member shall be entitled to one vote".

A closely related problem has arisen in cases interpreting the words "majority of the stockholders" as used in statutes, corporate bylaws, and voting agreements. In these early cases the courts have held, almost without exception, that this phrase means a majority of the stockholders in interest, that is, the holders of a majority of the shares. *State ex rel. Mitchell* v. *Horan*, 22 Wash. 197, 60 Pac. 135; *Weinburgh* v. *Union St. Ry. Adv. Co.*, 55 N.J. Eq. 640, 37 Atl. 1026; *Seward* v. *American Hardware Co.*, 161 Va. 610, 171 S.E. 650; *Bank of Los Banos* v. *Jordan*, 167 Cal. 327, 139 Pac. 691; *Fredricks* v. *Pa. Canal Co.*, 109 Pa. 50, 2 Atl. 48. *Toledo Traction, Light & Power Co.* v. *Smith*, 205 Fed. 643 (N.D. Ohio). *Contra: Smith* v. *Iron Mountain Tunnel Co.*, 46 Mont. 13, 125 Pac. 649. The *Toledo Traction* case strikingly illustrates the parallel between our case and the stockholder cases:

> "* * * We are aware that courts ought not to disregard the plain meaning of terms merely to avoid convenience, but it is equally a vital rule of construction that if possible, an interpretation should be given which will avoid manifest absurdities.
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> * * *

[11] Under §§ 401 (b) and (d) of the LMRDA elections of officers of local and intermediate bodies must be by secret ballot.

"No reason appears why in amending regulations there should prevail a different representation from that required when other important business is to be enacted.[12] Our conclusion is that every consideration requires that, when an attempt is made to change the regulations in a corporation not affected by Section 8638, the change can be only effected by the assent in writing of those stockholders who own ⅔ of the shares of stock, and that the word 'stockholders' in Section 8704 must be construed as if reading '⅔ of the stockholders in interest'. This same Section provides that at a meeting called for the purpose, a majority of the stockholders may change the regulations. This provision renders the absurdity all the greater, if the representation is to be per capita, rather than by extent of holdings.'"[13]

* * *

"It is said that this statute is vicious, in that it affords an opportunity, if so construed, to oppress the minority. That may be, but minorities in corporations have always the court's protection against the tyranny of the majority and it would seem that the oppression of the minority by the majority is not likely to be as mischievous to the corporation itself as if the conditions were reversed.[14] Our construction is in sympathy with the tenor of judicial decision wherever the question has been raised." (205 F. Supp. at 656-658, footnotes supplied.)

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[12] Similarly, in the LMRDA Congress plainly did not require "one delegate, one vote" for the conduct of other union business, notably the election of officers which was otherwise elaborately regulated. See the discussion at pp. 38-43, *infra*.

[13] Even as the basis of representation in a corporation is the amount of stock held, so the basis of representation within a union is the number of individual members.

[14] Compare Senator McClellan's views in proposing S. 1137, discussed at pp. 33-34, *infra*.

Contrary to the unexplained assertion of the Court below (R. 185), the stockholder situation provides an informative analogy in construing § 101(a)(3). The analogy between the rights of shareholders under existing law and those of union members which were to be protected was explicitly drawn in the debates. In discussing Title I of the Act, Senator Kuchel said, "The union member will receive statutory protection for his rights as a member in much the same way that a stockholder in a business corporation is protected by law in his rights as a stockholder."[15] The shareholder cases, like the present case, involved the allocation of legislative power among the members of an organization. The courts there eschewed a literal approach and took notice of "the policy of the state law" (*Toledo Traction, Light & Power Co.* v. *Smith*, *supra*, at 657) and "the common if not universal, practice of allowing voting by shares in private business corporations which * * * obtains generally throughout the United States" (*Weinburgh* v. *Union St. Ry. Adv. Co.*, *supra*, 37 Atl. at 1028). They accordingly held that the legislative intention clearly was to require a majority in interest rather than in mere number of stockholders.

In the instant case, as we have pointed out, the language of § 101(a)(3)(B)(i) does not require the concurrence of a majority of the delegates without regard to the number of members they represent. It is thus all the more appropriate here to take into account the

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[15] 105 *Cong. Rec.* 16760, 2 *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959* p. 1373 (Gov't. Printing Office, 1959, hereafter referred to as "*Leg. Hist.*") See also 105 *Cong. Rec.* 6717, 2 *Leg. Hist.* 1230. *Cf.* § 501(b) of the Act which allows members to bring the equivalent of stockholder derivative suits.

policy embodied in the Act and the traditional practices of labor unions in the United States. As we shall show, those factors, as well as the legislative history of § 101(a)(3), all point to the conclusion that Congress did not intend to prohibit the use of weighted voting at union conventions to increase dues.

B. The Legislative History of § 101 (a)(3) Requires Rejection of the Court of Appeals' Construction.

1. The Legislative History of § 101 (a)(3).

a. *The Senate.*

The general background of those provisions of the Labor-Management Reporting and Disclosure Act of 1959 which deal with the relationship between unions and their members (Titles I-VI of the Act) are well known and can be briefly stated. Under the chairmanship of Senator McClellan, the Select Committee on Improper Activities in the Labor or Management Field (hereafter the McClellan Committee) held extensive and highly publicized investigations of union racketeering and corruption from 1957 to 1959. In 1958 the Senate passed the Kennedy-Ives Bill[16] which would have required reporting and disclosure of union financial transactions, regulated the imposition of trusteeships on subordinate unions and prescribed procedures for the election of officers.[17] The Kennedy-Ives Bill died in the House.

On January 29, 1959 Senator Kennedy introduced S. 505[18], which was a modified version of the Kennedy-Ives Bill. S. 505 had no provision relating to the increase of union membership dues. However, on February 19 Senator McClellan introduced S. 1137.[19],

[16] S. 3974, 85th Cong., 2nd Sess. (1958).

[17] See Sen. Report No. 1684, 85th Cong., 2nd Sess. (1958).

[18] 1 *Leg. Hist.* 29-79.

[19] 1 *Leg. Hist.* 260-329.

Title I of which was entitled "Rights To Be Guaranteed in Charters of Labor Organizations". This is the origin in the 86th Congress of what became Title I of the Act, the "Bill of Rights of Union Members". Section 101(5) of S. 1137[20] guaranteed "Freedom From Arbitrary Financial Exactions". S. 1137 contained another provision of direct relevance to the present case: § 104(2) would have *required* some form of weighted voting at international conventions.[21] However, the bill which was reported by the Senate Labor Committee after hearing (S. 1555) contained no Bill of Rights provision. Accordingly, during floor debate on April 22 Senator McClellan objected that it was inadequate. He offered as an amendment "Title I, Bill of Rights of Members of Labor Organizations."[22] Section 101(a)(4) of this amendment was entitled "Freedom From Arbitrary Financial Exactions"; Section 101(a)(4)(A)(ii) is the direct antecedent of § 101(a)(3)(B) as enacted.[23] It provided that international labor organizations were permitted to raise dues only by:

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[20] 1 *Leg. Hist.* 269.

[21] 1 *Leg. Hist.* 278. This provision is set forth and discussed at pp. 33 to 35, *infra*.

[22] 105 *Cong. Rec.* 6475, 2 *Leg. Hist.* 1102.

[23] Section 101(a)(4)(A)(i) prescribed the methods by which a local labor organization could raise membership dues; it is the predecessor of § 101(a)(3)(A) as enacted. Section 101(a)(4)(B) of the McClellan amendment curtailed the amount which a union could charge as an initiation fee; no provision was enacted on this subject. Senator McClellan explained the reason for his proposal as follows:

> "In other words, the dues or the initiation fees cannot be increased, as they have been in certain instances. For example, if certain jobs come along, the initiation fees are hiked up. Some of the new members get the new jobs, and the old members who have been members for a long time, get no assignment to work. That has happened in my State, and it is happening in other States, too. It is not right; it is wrong." 105 Cong. Rec. 6477, 2 *Leg. Hist.* 1104.

> "majority vote of the delegates present at a general meeting of duly chosen delegates held after not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, in the case of a national or international labor organization."

Senator McClellan's amendment was adopted 47 to 46, and a motion to lay on the table a motion to reconsider was carried with the Vice-President breaking a 45 to 45 tie.[24] Two days later Senator Kuchel introduced his substitute which he stated "would clean up what we adopted the other night",[25] referring to the McClellan amendment. Section 101(a)(3) of Senator Kuchel's proposed amendment was a substitute for Senator McClellan's § 101(a)(4). Senator Kuchel stated that the language of his § 101(a)(3) "was taken almost verbatim from that part of the McClellan amendment which was applicable, except that we eliminated the so-called 75% initiation fee".[26] Section 101(a)(3)(B)(ii) of the Kuchel amendment read as follows:

> "in the case of a national or international labor organization, other than a federation of national and international organizations, by majority vote at a regular convention or a special convention held after not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice."[27]

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[24] 105 *Cong. Rec.* 6493, 2 *Leg. Hist.* 1119.

[25] 105 *Cong. Rec.* 6697, 2 *Leg. Hist.* 1224. He stated that such technical amendments were necessary because of the circumstances of the adoption of the McClellan amendment. *Id.* at 1229.

[26] 105 *Cong. Rec.* 6719, 2 *Leg. Hist.* 1232.

[27] 1 *Leg. Hist.* 519-520.

This language leaves no doubt that any majority vote at a convention would be a lawful method of raising dues. The Kuchel amendment was adopted without further discussion of its § 101(a)(3) and on April 25 S. 1555 passed the Senate with the Kuchel substitute as its Title I.[28] While the House Committee returned to the simpler formulation of the McClellan provision in drafting what became § 101(a)(3)(B) of the Act, its efforts, as we now show, were designed to expand rather than to narrow the permissible methods of raising union dues.[29]

b. *The House*

On March 4, 1959 a Joint Subcommittee of the House Committee on Education and Labor began hearings on various bills relating to labor-management reform.[30] After the Senate passed S. 1555 it became the focus of testimony. Several representatives of the labor movement testified in opposition to the Bill of Rights provision of the Senate bill because of its excessive regulation of internal union affairs.[31] AFL-CIO President

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[28] 1 *Leg. Hist.* 516-585.

[29] Indeed, Senator Kuchel subsequently observed that the House bill was the same as his, a view in which he was confirmed by Senator Goldwater and Representative Griffin (see pp. 30 to 31, *infra*).

[30] Hearings Before a Joint Subcommittee of the Committee on Education & Labor, House of Representatives, 86th Cong., 1st Sess., on H.R. 3540, H.R. 3302, H.R. 4473, and H.R. 4474 and Related Bills Regarding Labor-Management Reform Legislation (hereafter cited as "House Hearings").

[31] L.N.D. Wells, Esquire, House Hearings, pp. 994 *et seq.*; Joseph Curran, President, National Maritime Union, *id.* pp. 1323 *et seq.*; Albert J. Hayes, President, International Association of Machinists, *id.* pp. 1373 *et seq.*; George Meany, President of the AFL-CIO, *id.* pp. 1474 *et seq.*

George Meany criticized § 101(a)(3) of the Senate bill on the ground that it was "unduly specific and in consequence [would] unwarrant[ed]ly straightjacket unions".[32] He objected that this provision, if read literally, would have prevented international unions from changing dues by a mail-ballot referendum.[33] However, he added:

> "actually we do not think that the Senate really meant to bar international unions from following this procedure. We think that this is simply one more illustration of the difficulties inherent in the bill of rights approach. If we are correct in this assumption, as to what the Senate intended, *Section 101(a)(3) actually permits changes in dues by every method which unions generally employ except action by a general executive board or similar body.* There is absolutely no reason why an international union should not have the power, by its constitution or convention action, to delegate to its executive board the authority to impose assessments in case of financial urgency without the necessity of going to the expense of calling a national convention."[34]

The House Committee responded fully to President Meany's criticism. It provided that dues could be increased by referendum and by international executive

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[32] House Hearings, p. 1517. Senator McClellan, in a written statement filed to supplement his testimony before the House Committee, replied specifically to this criticism. He stated:

> "The bill of rights provides minimum, not maximum standards. Section 103 specifically preserves any membership rights broader than those provided in the bill of rights." 105 *Cong. Rec.* 10902, 2 *Leg. Hist.* 1294.

[33] *id.* at 1517-1518.

[34] *id.* at 1517-1518 (emphasis supplied).

boards.[35] President Meany also pointed out that the Senate version would have affected reduction of dues as well as increases. The bill as redrafted also complied with this criticism. These revisions were embodied in the Committee (Elliott) Bill (H.R. 8342)[36] and, in identical language, in the Shelley (H.R. 8490)[37] and Landrum-Griffin (H.R. 8400)[38] Bills. It is this language which was enacted as § 101(a)(3).

President Meany's testimony and the House Committee's reaction to that testimony are most revealing. President Meany's statement that the Senate bill did not forbid any of the accepted methods of raising dues,[39] except by the executive board, was not disputed by anyone although this testimony was obviously given careful attention both by the Committee and by Senator McClellan, the sponsor of Title I, who replied in detail thereto. Moreover, and most important, the House Committee's action conclusively demonstrates that it desired the widest latitude for unions to prescribe their own rules for raising dues as long as those rules allowed membership participation. It defies all reason to assume that the House Committee would permit dues increases to be made by the executive board but not by a convention vote in which all members were fairly

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[35] This authorization was limited to international executive boards who were authorized to raise dues by their unions bylaws and with the proviso that such increase would be effective only until the next international convention (§ 101 (a)(3)(B)(iii) of the Act).

[36] 1 *Leg. Hist.* 697-698.

[37] 1 *Leg. Hist.* 876-877.

[38] 1 *Leg. Hist.* 629-630.

[39] The practice of many unions to utilize weighted voting was presumably known to the House Committee. See *Ranes* v. *Office Employees*, 317 F. 2d 915, 917-18 (CA 7) and discussion at pp. 40-41, *infra*.

represented. Additionally, the fact that the Shelley Bill, which was supported by labor, contained the precise language which was enacted demonstrates that that language could not have the purpose which the Court below assigned to it. The labor movement would hardly have sponsored or supported legislation designed to outlaw the traditional democratic practices of scores of international unions.

The House Committee Report on the Elliott Bill, discussing Title I, stated merely that one of its provisions related to the members' "right to participate and decide upon the rate of dues, initiation fees and assessments."[40] Since § 101(a)(3) of all three bills before the House contained identical language, it was given only scant attention in floor debate. Representative Griffin observed generally that "the bill of rights in our substitute is essentially the bill of rights in the form passed by the other body. It guarantees to union members subject to reasonable rules and regulations, * * * that their dues and initiation fees will not be increased arbitrarily * * *."[41]

c. *The Conference*

In the Senate-House Joint Conference Committee, § 101(a)(3) again received relatively little comment. The few statements that were made while the bill was in conference reflected the consensus that the House version of § 101(a)(3) differed from the

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[40] House Rep. No. 741 on H.R. 4332, p. 7, 1 *Leg. Hist.* 765. In their expression of supplementary views, Representatives Elliott, Green, Thompson, Udall and O'Hara stated that the bill "guarantees the right of a member * * * to control membership and other fees charged by the union". House Rep. No. 741 on H.R. 4332, p. 78, 1 *Leg. Hist.* 836.

[41] 105 *Cong. Rec.* 15530, 2 *Leg. Hist.* 1566.

Senate's only by authorizing additional methods by which internationals could raise dues. Senator Goldwater, one of the conferees, in a comparison of the Senate and House bills, noted these changes and commented that the House version of § 101(a)(3) "appears technically preferable".[42] Senator Kuchel, the author of the Senate bill, stated that the Landrum-Griffin Bill "adopted substantially the same bill of rights language" which he had earlier authored.[43] The House Conference Report stated merely that any differences between the House and Senate provisions of Title I had been resolved in favor of the House version.[44]

2. Conclusions.

The objective of § 101(a)(3) readily appears from the foregoing recital. As stated by Judge Marshall:

> "It seems to be clear that Congress intended merely to assure that dues increases could not be imposed by irresponsible or arbitrary union leaders not answerable in any way to the membership at large. It did not set out to dictate to unions a particular method for voting by delegates at national conventions, and, especially, did not have any desire to foreclose national unions from giving more weight to their larger locals on this question" (R. 190).

This view was shared by the Court of Appeals for the Seventh Circuit in *Rance* v. *Office Employees*, 317 F. 2d 915, 918:

> "The protection of the rights of union members is the purpose of 101(a)(3). Unless the provisions

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[42] 105 *Cong. Rec.* 16487, 2 *Leg. Hist.* 1357.

[43] 105 *Cong. Rec.* 16760, 2 *Leg. Hist.* 1373.

[44] H.R. No. 1147 on S. 1555, 86th Cong., 1st Sess., p. 2, 1 *Leg. Hist.* 935.

> of subsection (B) are meaningless. Congress has said that that purpose is served when union members have representation at the council table where dues structures are changed."

The Court of Appeals in this case did not and could not point to any indication in the legislative history of a different or broader purpose. As already noted, it relied exclusively on what we have shown to be a misreading of the language of § 101(a)(3)(B)(i). But this Court has repeatedly observed the inadequacy of an uncritical reliance on statutory language in determining legislative intent. *Labor Board* v. *Fruit Packers*, 377 U.S. 58, 71-72, which likewise involved the Labor-Management Reporting and Disclosure Act of 1959, is particularly instructive. In rejecting a construction which would have outlawed consumer picketing *per se* the Court relied heavily on the circumstance that no sponsor of the bill considered consumer picketing to be one of the evils warranting legislation.[45] The same reasoning requires, *a fortiori*, rejection of the Court of Appeals' construction of § 101(a)(3). Not a word can be gleaned from the legislative history of this statute which even remotely suggests that any proponent or opponent of the bill, or any witness at the hearings, considered that weighted voting at conventions was an evil. On the contrary, the legislative history conclusively demonstrates that Senator McClellan, the individual most responsible for § 101(a)(3)(B) in its present form considered weighted voting at international conventions to be the most desirable method of representation.

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[45] "We think it is especially significant that neither Senator, nor the Secretary of Labor in testifying in support of the Administration's bill, referred to consumer picketing as making the amendments necessary." 377 U.S. at 65.

As we have seen, Senator McClellan was the prime mover of the events that led to the enactment of § 101 (a)(3). The critical phrase of § 101(a)(3)(B)(i) as enacted ("majority vote of the delegates voting") differs by only one word from that of § 101(a)(4)(ii) in Senator McClellan's prior proposal ("Majority vote of delegates present"). The change from "present" to "voting" (doubtless designed to prevent abstaining delegates from being counted as opposed to a dues increase) does not, of course, affect the immediate issue. For all relevant purposes, the language to be construed here is that of Senator McClellan. Senator McClellan in his original bill, S. 1137, would have *required* that the voting strength of convention delegates be proportionate to the size of their constituency. § 104(2) of S. 1137 provided:

> "Voting at Conventions.—All delegates elected or designated by the constituent units of an international labor organization pursuant to the provisions of Section 103(2) to represent such constituent unit at any meeting or convention held by such labor organization shall have a vote in all elections for officers and upon other matters brought before such meeting or convention for action or ratification by vote, *which vote shall be numerically equivalent, or proportionate, to the number of the members of such constituent unit* as disclosed by the roster of members required to be furnished under the provisions of section 103 (3)." (I *Leg. Hist.* 278, emphasis supplied)

Analyzing this provision of his bill, Senator McClellan stated that it was "designed to assure fair and equitable representation of constituent units". 105 *Cong. Rec.* 2668, 2 *Leg. Hist.* 1001. His proposal grew out of certain abuses uncovered by the McClellan Committee which can flourish under the rule of "one delegate, one vote", but are impossible where the delegate

votes his full constituency.[46] These include dividing a single local into many locals, thereby giving the original local a disproportionate voice in representative bodies,[47] and the creation of ghost locals which would cast ballots at international conventions and thereby tip the balance of power.[48] It is unthinkable that Senator McClellan, who proposed that *only* weighted voting be permitted at conventions would sponsor an amendment which would have prohibited such voting.[49]

[46] Senator McClellan had stated in testimony before the Senate Labor Committee that his bill "is the product of my judgment, based on what I have listened to for 2 years of the evils that I know exist, that I know need to be corrected * * *." Hearings on Labor-Management Reform Legislation Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 86th Cong., 1st Sess. (1959) (hereafter cited as "Senate Hearings"), p. 705.

[47] The Interim Report described this practice as follows:

> "The locals in New York City were made up of members from various shops. One local, for instance, local 250, had members who were dogfood makers, optical workers, printers, notebook manufacturers, and crucifix platers. Under the arrangement as adopted by the executive board of the UAW-AFL each one of these units would have 1 vote, whereas the entire local may have had only 1 vote prior to this amendment. Weintraub said that a local union in his region had close to 5,000 members and had only 10 votes, while one of the New York locals with 500 members may have had 20 votes. Even Angelo Inciseo could not stomach this vote-stacking, according to Weintraub, so the plan was abandoned and Inciseo was persuaded to cast his vote for Doria on the strength of a promise that he would be made regional director of the UAW-AFL." *Interim Report of the Select Committee on Improper Activities in the Labor or Management Field*, S. Rep. No. 1417, Part II, 85th Cong., 2nd Sess., p. 191.

[48] *Id.*, pp. 198-99.

[49] Weighted voting is the only feasible method by which a vote "proportionate to the number of members of such constituent unit"

A most glaring mistake in the reasoning of the majority below was its failure to draw the obvious inference from Senator McClellan's proposal in S. 1137 and his sponsorship of what ultimately became § 101(a)(3)(B)(i). The majority said: "It is surprising that appellants should also rely upon the McClellan Bill and the Barden Bill, each of which specifically *allowed* weighted voting. * * * These bills were rejected." (R. 186, emphasis added). Under those bills weighted voting was not merely *allowed*, it was *required*. "These bills were rejected", not because Congress—or anyone else—opposed weighted voting, but because Congress was unwilling to unduly restrict unions in formulating their own voting procedures. The changes made from the Bill of Rights as introduced by Senator McClellan enlarged the permissible methods of raising dues. By these actions Congress demonstrated that it did not wish to disturb those union procedures which, in Representative Griffin's words, assured members, "that their dues and initiation fees will not be increased arbitrarily."[50]

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can be had by most international unions. For example, as Judge Marshall demonstrated, a fully proportional system of representation would require the AFM to have 14,000 delegates at its convention. (R. 191)

Congressman Barden, Chairman of the House Committee on Education and Labor and a supporter of the Landrum-Griffin Bill, also favored weighted voting in international conventions. Section 102 (b)(3) of the Barden Bill, H.R. 4473, would have required that the "voting strength of each delegate shall be determined in accordance with a formula which will insure and guarantee that each member of every constituent union of such international has an equal voice through his delegate in determining the results of all such elections [of officers]". 1 *Leg. Hist.* 190.

[50] 105 *Cong. Rec.* 15530, 2 *Leg. Hist.* 1566.

C. The Court's Construction of § 101 (a)(3) is Inconsistent with the Other Provisions of the Statute.

1. Title I.

The Court below, by reading § 101(a)(3) in splendid isolation, attributed to Congress a legislative purpose in clear conflict with the other provisions of the Act and, indeed, with the Title of which it was a part throughout the legislative process.

Thus, although the equal rights provision of Title I (§ 101(a)(1)) guarantees to members equal rights with respect to many internal political procedures,[51] the Court below read § 101(a)(3) as prohibiting equal representation in an international convention. It thereby assigns to Congress the bizarre intent to promote equal membership rights in one provision and to forbid such equality in another provision of the same title. Under that view, although equality of vote is required within the local, it is forbidden within the highest legislative council of the union.

The formula "one delegate, one vote" sacrifices equality of members on the altar of literalism to achieve equality of delegates. Yet every word of Title I, including its heading—"BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS"—proclaims that Congress was concerned solely with protecting the rights of members as members and not as delegates or as officers or employees.[52] The House managers of the bill took pains to emphasize that §101(a)

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[51] "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws".

[52] There is already a fairly substantial body of opinion in the lower federal courts that Title I does not protect members in their

(5), relating to safeguards against improper disciplinary action applies only to suspension of membership and not to suspension of member's status as an officer.[53] There is nothing in the legislative history which remotely indicates congressional solicitude for the rights of delegates *qua* delegates, let alone an interest sufficient to subordinate the paramount interest of members in equality of representation.

That Congress concentrated on protecting the rights of *members* is further shown by the debate which led to the enactment of § 103. Section 101(a)(1) of the original McClellan bill of rights as approved on April 22

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capacity as officers or employees. See *Tomko* v. *Hilbert*, 288 F. 2d 625, 629 (CA 3), quoting with approval from *Strauss* v. *International Brotherhood of Teamsters*, 179 F. Supp. 297, 300 (E.D., Pa.):

> "• • • Without entering into a detailed discussion of each of its provisions, we observe that this part of the Act deals with (and is directed toward) the *membership in general* and their relationship, as members, with their union • • •". (Emphasis in *Strauss* opinion).

Accord: Csokerly v. *Loblow, Inc.*, 56 LRRM 2527 (W.D.Pa.); *Mamula* v. *Local 1211, United Steelworkers*, 202 F. Supp. 348 (W.D.Pa.); *Kelley* v. *Stricho*, 47 LRRM 2609 (E.D.Mich.); *Vars* v. *Boilermakers*, 204 F. Supp. 245 (D. Conn.); *Hamilton* v. *Guinan*, 199 F. Supp. 562 (S.D.N.Y.); *Barton* v. *Independent Packers Union*, 199 F. Supp. 138 (D. Kan.); *Bennett* v. *Hoisting and Portable Engineers, Local 701*, 207 F. Supp., 361 (D. Ore.); *Jackson* v. *Martin Co.*, 180 F. Supp. 475 (D. Md.). *Contra: Alvino* v. *Bakery Workers Union*, 56 LRRM 2812 (D. D.C.).

In *Grand Lodge* v. *King*, 56 LRRM 2639 (CA 9, June 9, 1964) the Court held that since officers are members they are entitled to all membership rights guaranteed in §§ 101 (a)(1) and (2) of the Act and may not be removed from office for exercising those rights. Whatever the merits of that decision, it is entirely consistent with the point we are making here, namely, that the statute is exclusively concerned with the protection of the rights of members and that no special rights are created in officers. Cf. § 501 (a) of the Act which imposes fiduciary obligations on union officers in behalf of union members.

[53] House Conference Report No. 1147, p. 9, 1 *Leg. Hist.* 935.

had provided generally that "every member * * * shall have equal rights and privileges within such organization including identical voting rights and equal protection under its rules and regulations."[54] Some Senators expressed concern that the Kuchel substitute, by particularizing the rights as to which equality was guaranteed, would exclude equality with respect to other rights. To avoid this implication, which Senator Kuchel expressly disclaimed, the Senate amended § 103 of the substitute, which preserved the rights which members had under state or federal law, to preserve also members' rights under "any union constitution or bylaws".[55] Yet the effect of the Court of Appeals' construction of § 101(a)(3) is to destroy the right which members of many unions enjoyed under their bylaws to be represented equally at their international conventions.

2. Title IV.

The proposition that Congress intended to prohibit weighted voting at conventions in connection with dues increases is likewise irreconcilable with Title IV of the Act: ["ELECTIONS".] Title IV enacts elaborate regulations for the election of union officers. There is nothing in that Title which prohibits election of officers at union conventions by a weighted voting system. Section 401(f) simply provides that "the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title."[56]

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[54] 105 *Cong. Rec.* 6475, 2 *Leg. Hist.* 1102.

[55] 105 *Cong. Rec.* 6719-6722, 2 *Leg. Hist.* 1232-1234.

[56] The only provision in Title IV regarding voting rights is § 401 (e) which requires that in any election required to be held by secret ballot "each member in good standing shall be entitled to one vote". This provision, like § 101 (a)(1), is plainly calculated to achieve equality among *members*.

The Secretary of Labor has officially interpreted Title IV as leaving unions free to determine their own systems of representation at conventions:[57]

> "There is no indication that Congress intended, in enacting Title IV of the Act, to require representation in delegate bodies of labor organizations to reflect the proportionate number of members in each subordinate labor organization represented in such bodies. Questions of such proportionate representation are determined in accordance with the labor organization's constitution and bylaws insofar as they are not inconsistent with the election provisions of the Act. *Congress did not attempt to specify the organizational structure or the system of representation which unions must adopt.*" (Emphasis supplied).[58]

Congress was well aware of the practice of many international unions to allow weighted voting proportionate to membership and other procedures other than "one delegate, one vote" at international conventions. Among the sources of information before

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[57] Since the Labor Department is vested with, and from the beginning has discharged, responsibility for enforcing the election provisions of Title IV, the Department's views are entitled to considerable weight. *Skidmore* v. *Swift & Co.*, 323 U.S. 124 139-40; *Norwegian Nitrogen Products* v. *United States*, 288 U.S. 294, 315.

[58] United States Dep't. of Labor, *Technical Assistance Aid No. 5, Electing Union Officers* (rev. Sept. 1962). The Secretary of Labor apparently expressed this opinion in answer to an inquiry whether the equal-rights provision of § 101 *requires* a system of weighted voting. The Secretary, while recognizing that the courts have enforcement authority over Title I, looked to Title IV as a guide to construction of § 101 (a)(1). The Court below, by contrast, treated Title IV as irrelevant in construing § 101 (a)(3). The Secretary's approach is clearly correct. See e.g., *Mastro Plastics Corp.* v. *Labor Board*, 350 U.S. 270, 285; *Labor Board* v. *Lion Oil Co.*, 352 U.S. 282, 288.

Congress when Title IV was drafted were the studies of the Bureau of Labor Statistics and the National Industrial Conference Board that surveyed the constitutional procedures regulating elections.[59]

The Bureau of Labor Statistics described voting at conventions as follows:

> "Under constitutions which provided for the election of officers by referendum, each eligible union member was to cast his own ballot. Where officers are elected at a convention, a delegate's voting strength is usually scaled to reflect the number of members he represents, although the specific formulas set forth in the constitutions differ considerably. For instance, the constitution of the International Brotherhood of Electrical Workers stipulated that 'each local union shall be entitled to a per capita tax vote on members; that is, one vote for each member in good standing . . .' Under this arrangement, the delegates of a local union with 5,000 members would be entitled to cast a total of 5,000 votes."[60]

Similarly, the National Industrial Conference Board's *Handbook* notes that as a rule international unions "weight the delegate's vote according to the number of members he represents." The *Handbook* continues:

> "The constitutions of a few small international unions give each local union's delegate one vote in nominating and electing the internal president. In these unions, the delegate's local has one vote

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[59] See Rezler, *Union Elections: The Background of Title IV of the LMRDA*, in *Slovenko, ed., Symposium on the Labor-Management Reporting and Disclosure Act of 1959* (Claitor's Bookstore Publishers, 1961), p. 475 at 482.

[60] United States Department of Labor, Bulletin No. 1239, *Union Constitution Provisions: Election and Tenure of National and International Union Officers* (G.P.O., 1958) p. 15.

> whether it has five or five hundred members. Most of the 137 constitutions, however, weight the delegate's vote according to the number of members he represents. Some constitutions achieve this weighting by requiring that voting be done by 'roll call per capita vote.' Other constitutions achieve the same end by specifying that the delegates are to represent units of one hundred members." [61]

In passing on another question in the interpretation of § 101(a)(3), the Seventh Circuit said in *Ranes* v. *Office Employees*, 315 F. 2d 915, 917-18:

> "We cannot assume that Congress was unaware of of the traditional structure and dues practices of labor unions when it enacted 101(a)(3), or that Congress being aware of the traditional structure and practices, intended by enacting that Section to strip international unions of their traditional power to control the minima and maxima of rates of dues without one word in the Committee Reports expressing that intention. On the contrary, we must assume that Congress was aware of the established structure and practices and interpret the statute in the light thereof. Cf., *Perrine* v. *Chesapeake & D. Canal Co.*, 9 How. 172; *Local 1976, Etc.* v. *N.L.R.B.*, 357 U.S. 93, 98-101."

In sharp contrast the Court below erroneously said:

> "Nor is it of significance that Title IV of the Act apparently permits the election of officers of unions by a weighted vote. The considerations the Congress may well have thought relevant to election of officers on the one hand, and raising dues at regular conventions, on the other, are not the same." (R. 185).

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[61] National Industrial Conference Board, *Handbook of Union Government, Structure and Procedures, Studies of Personnel Policy No. 150* (1956), p. 73.

Nothing warrants the Court's surmise. No such theoretical "considerations" are advanced, because, we submit, none are available. How to elect those who receive, invest and expend the monies of a union is hardly less critical to the welfare of members than how to obtain those monies. Indeed, the entire history of Title IV of the Act demonstrates that irregularities in the election of union officers were a predominant concern of Congress. In 1958 the Senate passed the Kennedy-Ives Bill whose regulation of union elections was the direct antecedent of Title IV. The Kennedy-Ives Bill had no provision prescribing the methods by which unions could raise dues. President Eisenhower in his 1959 message proposed legislation:

> "To require that unions observe minimum standards for the conduct of the elections of officers, including, in addition to periodic elections, the right of members to vote in secret without restraint or coercion and upon due notice, uniform opportunity for all members to be candidates, procedures to insure an accurate tabulation of votes, a ban upon the use of union or employer funds to promote candidacies for union office, and requiring constitutions and bylaws to contain detailed statements of election procedures and compliance with such procedures."[62]

This proposal was elaborated by Secretary of Labor Mitchell.[63] Neither the President nor the Secretary of Labor suggested that the methods for raising dues had been the subject of any abuse. Similarly, the Kennedy-Ervin Bill, S. 505, and the Bill reported out by the Committee contained election provisions almost

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[62] S. Doc. No. 10, 86th Cong., 1st Sess. (1959), p. 2, 1 *Leg. Hist.* 81.

[63] 105 *Cong. Rec.* 1727-1728, 2 *Leg. Hist.* 991.

identical to those of Title IV as enacted, but, as we seen, had no provision akin to § 101(a)(3). It cannot be assumed—as it must be to sustain the judgment below—that the same Congress which allowed weighted voting in union elections (which it closely regulated) prohibited such voting for raising dues in a provision designed only to insure membership participation.

D. The Construction of the Court Below Conflicts With The Policy of the Act as a Whole

As the Court below said: "Everyone seems to agree that the Labor-Management, Reporting and Disclosure Act was 'to insure union democracy,' and that the intended beneficiary of the provisions of the Act is the union member." (R. 186). Nevertheless, the Court adopted an interpretation which destroys a method which by its own view "is to all appearances the most 'democratic' method in the sense that each member is duly represented," and is "a method of voting widely recognized as fair and proper by a number of unions." (R. 184). Moreover, the Court conceded that "it may fairly be said that the passage of the Labor-Management, Reporting and Disclosure Act of 1959 was not brought about by any abuses found to have flourished under the aegis of the weighted voting system." (R. 185).

The Court's only attempt to justify its decision in terms of this conceded congressional policy was the following curious statement:

> "One need not be steeped in the historical data affecting the uses and abuses of labor organizations to realize that any complicated system of proposing and voting for increases in dues, initiation fees and assessments is subject to manipulation, to the disadvantage of the individual union member. We

> hold that the simple, unambiguous requirements set forth in Section 101(a)(3)(B) were intended to mean just what they appear on their face to mean, and that in this way the Congress intended to prevent future skulduggery of every possible character and description in the fertile field of increasing dues, initiation fees and assessments, even if no particular abuses in the matter of weighted voting for such increases have been proved." (R. 186).

This is wholly unwarranted speculation premised on nothing more than meaningless epithets. We pass over the majority's unrealistic assumption that Congress considers itself capable of preventing wrongdoing "of every possible character and description" in any field. And we readily acknowledge that any democratic right or practice may become the subject of "future skulduggery". But we respectfully insist that the Court reduced reasoning to absurdity when it assigned to legislators admittedly bent on expanding democracy an intention to forbid *equal* representation where the only abuses which "had been proved" grew out of *unequal* representation. Judge Marshall, dissenting, could

> "find no support for the majority's suggestion that dues increases are a particularly 'fertile field' for 'skulduggery,' to which an especially strict standard should be applied." (R. 188).

The Court below sought to justify its outlawry of a method which assured equality of representation by arguing that the statute allows a referendum vote of all members (R. 185). But a referendum, while also a democratic method used by many unions, has characteristics which other unions could lawfully consider to be undesirable. In its report on the Kennedy-Ives

Bill, the Senate Labor Committee outlined the possible objections to the formulation of union policy by referendum.[64] Their report thus totally refutes any possible contention that Congress thought the referendum so desirable that it forbade all other voting methods by which members would be treated equally.

Congress intended the widest possible preservation of established union procedures and practices. Of course, the Act altered or invalidated some union laws. But—consistent with entrenched democratic traditions[65]—it did so only to the extent that demonstrated past abuses established a compelling need. Numerous provisions of the Act expressly provide that the bylaws of the union shall be operative.[66] This was in direct response to impressive testimony urging maximum retention of democratic values of union autonomy.

In his testimony before the House Committee Secretary Mitchell said:

> "The administration does not believe that the Government should inject itself into the internal affairs of any organization more than is absolutely

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[64] Senate Report No. 1684, 85th Cong., 2nd Sess., p. 14. Referendums create special problems of administration for a union like the Federation, many of whose members are required to travel by their occupation.

[65] The classic statement is Chafee, *The Internal Affairs of Associations Not For Profit*, 43 Harv. L. Rev. 993, 1027-1029 (1930).

[66] For example, Congress, in allowing international executive boards to raise membership dues conditioned its approval on express authorization of such action in the union's own bylaws. See also §§ 3(h), 3(o), 101(a)(1), 101(a)(2), 101(a)(4), 103, 302, 303(a)(2), 304(c), 401(f), 401(h), 403. Other sections implicitly incorporate union bylaws, including § 101(a)(3)(B)(i) itself which, even under respondents' view, leaves the qualifications of delegates to be determined according to union law.

necessary to correct the evils which must be remedied."[67]

Professor (now Solicitor-General) Cox testified before the Senate:

> "I would urge that self-determination, self-government, is preferable to Government regulation. This means not only that interference in the internal affairs of unions ought to be kept to the necessary minimum, but also that wherever possible we should encourage unions to bring about their own reforms before we resort to Government sanctions."[68]

The Bill as enacted was a deliberate attempt to regulate demonstrated evils without unnecessary interference with historic union practices. As Senator Kennedy said when the Bill passed the Senate:

> "It is a bill designed to permit responsible unionism to operate without being undermined by either racketeering tactics or bureaucratic controls. It is designed to strike a balance between the dangers

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[67] House Hearings, p. 8. The Secretary also said:

> "I would hope that the committee would consider two things: (1) That it not enact legislation which attempts, as some proposals have, to regulate the internal affairs of a union in such a way as to stipulate what should be in the constitutions, what should be in the bylaws, and how the union should be run minutely and in detail.
>
> "I would hope that the committee would not do that, because I think, as I said in my statement, that this I do not think is the proper function of the Federal Government or any government." *Id.* p. 13.

[68] Senate Hearings, p. 112. See also the testimony of John Raber for the National Firemen's Union who praised the election provision of the Kennedy-Ervin Bill on the ground that it "imposes a minimum of Government regulation over the conduct of the internal affairs of unions." *Id.* at p. 220.

of too much and too little legislation in this field."[69]

In writing about the new law and its administration shortly after its enactment, Secretary of Labor Mitchell said:

> "It has been said that the Labor-Management Reporting and Disclosure Act of 1959 put the Department of Labor into the business of supervising internal union affairs for the first time. Without detracting from that statement, it should be recognized that the new law leaves in the hands of union members and officers the basic responsibility of running their unions honestly and democratically. The United States Government is *not* in the business of *managing* the internal operations of labor organizations, although its regulation of unions and their relations with employes has been substantially enlarged."[70]

Where Congress was careful to preserve, the courts should not rush in to destroy.

While in some situations there will be tension between the congressional objectives of promoting individual members' rights in union democracy and preserving traditional union practices, the two are by no means inconsistent.[71] Existing union constitutions

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[69] 105 *Cong. Rec.* 7021, 2 *Leg. Hist.* 1258.

[70] See Mitchell, *Safeguards for Union Democracy*, in *Slovenko, ed., Symposium on the Labor-Management Reporting and Disclosure Act of 1959* (Claitor's Bookstore Publishers, 1961), p. 135 (emphasis in original).

[71] Compare the statement of Senator Mundt:

> "• • • in the more than 30 amendments which have been added to the bill from the floor of the Senate we have moved in the direction of giving important new democratic tools to rank-and-file union members, with which I hope they may be able to do a good job of cleaning up the improper practices which we as legislators have not undertaken to do by way of legislative mandate." 105 *Cong. Rec.* 6743, 2 *Leg. Hist.* 1256.

and bylaws are themselves the product of that democratic self-government which the Act is designed to assure. This is particularly true of those provisions, such as Article 5 of the Federation Constitution, which represent the allocation of legislative power among the members themselves. As Professor Countryman has observed, Article 5 was designed as a compromise between the interest of large locals in proportionate representation and that of small locals not to be submerged by the large.[72]

Dr. Leiserson has described the three main types of voting methods recognizable in union constitutions as follows:

> "The first is the most common. This bases both the number of delegates and the number of votes on the same specified number of members, so that both increased roughly in proportion to membership increases. * * *

[72] "Legislative powers are exercised, and national officers are elected for one-year terms by the national convention, which is required to meet annually. In this convention, each Local has one vote for each 100 members subject, originally, to a maximum of ten votes for any one Local. Of course, this limitation pleased all but the Locals limited by it, the chief objector being the largest Local—New York's No. 310. In 1906 the New York objections culminated in a proposal to eliminate the ten-vote rule, but the convention, after listening to President Weber's reminder of the control exercised in the old National League by a few large Locals, adopted a compromise provision —still in effect—under which the ten-vote rule is retained for the election of officers but may be lifted on demand of ten delegates or five Locals in the enactment of laws, all laws so enacted to be subject to veto by a committee consisting of the Executive Board and the chairmen of all other national committees."

Countryman, *The Organized Musicians*, 16 U. Chi. L. Rev. 56, 59-60 (1948).

> "The second type holds down the number of delegates but grants additional votes in direct proportion to membership. * * *
>
> "The third type increases both the number of delegates and votes at a lessening rate as the membership increases. This has many formulas, but the principle is the same—the larger the local union the smaller its proportion of representatives and votes. * * *"[73]

He describes the purpose of these methods as follows:

> "All three types attempt to balance in some measure the representation of local government units and size of membership, i.e., of small and large locals."[74]

Yet the Court of Appeals, without pointing to a single demonstrated objective to be served by its construction, invalidated a voting procedure which followed a convention voting system utilized by many international unions for many years. The Court of Appeals' rigid determination that the only lawful system is one delegate, one vote, would not only invalidate provisions which allow delegates to vote the full *membership* strength of their constituency. It would likewise forbid the practice of a great many internationals to allow the delegates attending to cast the full *delegate* strength where less than the full number to which the local is entitled can come to the convention.[75] (R. 110-

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[73] Leiserson, *American Trade Union Democracy* (Columbia University Press, 1959), pp. 130-131.

[74] *Id.* at 13.

[75] See also *id.* p. 130: "Although proxy voting is generally prohibited (Longshoremen and Blacksmiths are exceptions), every convention delegate casts not only his own vote, but a share of the voting strength of the local union he represents as well. This voting strength varies with the size of the locals, and the total vote of a local union may be divided among its delegates or one of them may cast all its votes."

112). Thus, members of local unions would be deprived of representation to the extent that they could not afford the costs of sending delegates.[76] We have already noted that President Meany testified without contradiction that "section 101(a)(3) actually permits changes in dues * * * by every method which unions generally employ except action by a general executive board or similar body."[77] In view of the lengthy hearings and elaborate investigation into union practices which preceded the enactment of this law, it cannot be assumed that Congress was oblivious to the existence of these practices. As Judge Marshall said:

> "It is noteworthy that none of the Congressmen and Senators who discussed the bill ever adverted to this problem, or indicated in any way that a change in the practice was desirable. The same is true of the many commentators who have exhaustively analyzed the provisions of the Act, from every possible standpoint." (R. 191).

It is inconceivable that Congress would outlaw a widespread and concededly democratic practice without explicit language to that effect or any explanation of the reasons for such action. Accordingly, like Judge Marshall, this Court should reject a construction which would prevent "the use of a perfectly normal and accepted means of voting at union conventions, especially since there is no evidence that Congress felt this method was subject to any abuse whatsoever". (R. 191).

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[76] By the same token, the practice of many internationals to allow local unions to pool their resources to send a single delegate to the convention to represent and cast the voting strength of all of them would be invalidated. The members of many small locals would thereby be deprived of any representation. This, in a statute designed to promote union democracy!

[77] House Hearings, p. 1518.

In this case the Court is not required to resolve a conflict among congressional objectives. The Court of Appeals' construction advances neither the members' interest in union democracy nor the union's interest in preservation of its laws—the fruits of past democratic choice. Both interests are frustrated by the decision below. The right of members to equal representation at international conventions is destroyed.[78] So is the basic right of union members to govern themselves.

II. AS CONSTRUED BY THE COURT BELOW, § 101(a)(3)(B)(i) CONFLICTS WITH THE FIRST AMENDMENT.

Under the decision below, union members are forbidden to raise their own dues by a procedure which, in the Court of Appeals' own words, "is to all appearances the most democratic method, in the sense that each member is duly represented." As so construed, § 101(a)(3)(B)(i) constitutes an unprecedented interference with the self-government of union members in violation of the members' rights to free association as guaranteed by the First Amendment.

It is well that we state at the outset the reach of our argument: The constitutionally protected right to association necessarily encompasses the right to determine the rules governing its structure and procedures; that right in turn may not be infringed without some

[78] Equality of representation has long been considered to be an important element of democracy. Participation by the members of an organization, like that of citizens of a society, in the formulation of its decision is the essence of democracy. Where this participation consists of electing of representatives who are charged with decision making, equality of representation makes such participation more effective and meaningful. *Reynolds* v. *Sims*, 377 U.S. 533. Cf. *Wesberry* v. *Sanders*, 376 U.S. 1; *Gray* v. *Sanders*, 372 U.S. 368.

overriding public purpose. Since the application of § 101(a)(3)(B)(i) to invalidate weighted voting at international conventions serves no public purpose, its constitutionality cannot be sustained. Accordingly, we do not, for we need not, contend that Congress is forbidden absolutely to regulate the internal affairs of unions or even that Congress may not, as it has in § 101(a)(3), prohibit some methods of raising dues without any membership participation whatsoever.

It is now entirely beyond dispute that the freedom of assembly protected by the First Amendment encompasses the right of association. *Aptheker* v. *Secretary of State*, 378 U.S. 500; *NAACP* v. *Alabama*, 377 U.S. 288; *Railroad Trainmen* v. *Virginia Bar*, 377 U.S. 1; *Gibson* v. *Florida Legislative Committee*, 372 U.S. 539; *NAACP* v. *Button*, 371 U.S. 415; *Louisiana* v. *NAACP*, 366 U.S. 293; *Shelton* v. *Tucker*, 364 U.S. 479; *Bates* v. *Little Rock*, 361 U.S. 516; *NAACP* v. *Alabama*, 357 U.S. 449; *DeJonge* v. *Oregon*, 299 U.S. 353. Of course, "the Constitution protects the associational rights of the members of the union precisely as it does those of the NAACP." *Railroad Trainmen* v. *Virginia Bar*, 377 U.S. 1, 8. The right of workers to form labor unions was recognized by Mr. Chief Justice Hughes for a unanimous court in *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U.S. 261, 265, as follows:

> "Neither this provision [Section 7 of the Wagner Act] nor any other provision of the Act can properly be said to have 'created' the right of self-organization or of collective bargaining through representatives of the employee's own choosing. In *National Labor Relations Bd.* v. *Jones & L. Steel Corp.*, 301 U.S. 1, 33, 34, we observed that *this right is a fundamental one;* that employees

> 'have as clear a right to organize and select their representatives for lawful purposes' as the employer has 'to organize its business and select its own officers and agents'; that discrimination and coercion 'to prevent the free exercise of the right of employees to self-organization and representation' was a proper subject for condemnation by compent legislative authority. We noted that 'long ago' we had stated the reason for labor organization—that through united action employees might have 'opportunity to deal on an equality with their employer,' referring to what we had said in *American Steel Foundries* v. *Tri-City Central Council*, 257 U.S. 184, 209." (emphasis supplied).

See also *Thomas* v. *Collins*, 323 U.S. 516.

It bélabors the obvious to observe that an organization without rules is a contradiction in terms. It is equally obvious that *self* organization means that those who join in a common cause *themselves* prescribe the rules by which their organization exists and functions. If government had unfettered power to fix the rules by which organizations may make decisions, it could control the results of their deliberations and indeed paralyze them.[79] Freedom of association, whose high function is to act as a counter-balance to the tyranny

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[79] The allocation of decision-making power can also affect the judgment whether to associate at all, since individuals and small groups are often reluctant to join an organization in which their proportionate strength is diluted by the voting structure. Yet, under plaintiffs' construction of § 101(a)(3)(B), Congress is said to have told the organized musicians (and millions of other organized workers) that they may not grant to members of large locals representation equal to that of similar locals. As Judge Marshall demonstrated it would be virtually impossible to achieve equality except by weighted voting. See n. 49, *supra*.

of the majority,[80] would thus be rendered illusory.[81] "Freedom of association is protected not only against frontal attack, but also from being stifled by more subtle governmental interference". *Bates* v. *Little Rock*, 361 U.S. 516, 523. Could Alabama constitutionally forbid the NAACP from acting except by referendum of its members? Could Congress constitutionally forbid all raising of union membership dues except by an 80% majority at a referendum?

This Court has held that freedom of religion implies the power of religious organizations "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, 116, reaffirming *Watson* v. *Jones*, 13 Wall. 679. Freedom to join in other private associations must likewise, to be meaningful, encompass the right of self-government. Indeed, this Court has equated the effect given by courts to the decisions of religious tribunals and that given "to the determinations of the judicatory bodies established by clubs and civil associations. *Gonzales* v. *Archbishop*, 280 U.S. 1, 16-17 (Brandeis, J.), quoted with approval in *Kedroff*, 344 U.S. at 116, n. 23.[82]

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[80] DeTocqueville, *Democracy in America*, Vol. I, Ch. 12.

[81] One need not go beyond the decisions of this Court for instances of majorities attempting to stifle the freedom of association of a minority to avoid that association's impact on public affairs. See e.g., *NAACP* v. *Alabama*, 357 U.S. 449; *NAACP* v. *Button*, 371 U.S. 415.

[82] Could it seriously be contended that a state would have the right to prescribe the means by which a religious organization can raise the dues of its members? Yet expulsion from a religious society may have economic and social—to say nothing of emotional or spiritual—consequences far more serious than expulsion from a labor union.

Since it has been held that the right of free association is not absolute,[83] future cases may require a delicate balance between the declared public interest in a particular regulation of internal union affairs and the members' constitutionally protected freedom from governmental interference. But the decision below raises the constitutional question in a much less difficult form: As construed by the majority, the statute outlaws long-recognized union procedures for self-government, admittedly without advancing membership participation —the provision's sole avowed purpose. On the one side of the constitutional balance thus to be struck is the right of members of an organization to allocate voting strength with regard to major policy decisions so as to give equal treatment to all members; on the other side is—nothing. Whereas the State may encroach upon personal liberties such as freedom of association "only upon showing a subordinating interest which is compelling",[84] no public interest whatsoever is promoted by requiring unions to discard weighted voting at international conventions. As was said in *NAACP* v. *Alabama*, 377 U.S. 288, 307-308:

> "This Court has repeatedly held that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. See *NAACP* v. *Alabama*, 357 U.S. 449 at 463-464. '. . . [T]he power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom.'

[83] E.g., *Communist Party* v. *Control Board*, 367 U.S. 1, 88-105.

[84] *Bates* v. *Little Rock*, 361 U.S. 516, 524. The governmental purpose unsuccessfully relied upon by the respondents there was the "fundamental" power to tax. *Id.*

Cantwell v. *Connecticut*, 310 U.S. 296, 304. ' . . . [E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.' *Shelton* v. *Tucker*, 364 U.S. 479, 488 (footnote omitted). For other cases elaborating this principle, see *Lovell* v. *Griffin*, 303 U.S. 444, 451; *Schneider* v. *State*, 308 U.S. 147, 161, 165; *Martin* v. *Struthers*, 319 U.S. 141, 146-149; *Saia* v. *New York*, 334 U.S. 558; *American Communications Assn.* v. *Douds*, 339 U.S. 382; *Kunz* v. *New York*, 340 U.S. 290, 294-295; *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U.S. 293."

A particular exercise of First Amendment liberties cannot be infringed without a proper legislative purpose merely because certain other activities may constitutionally be restricted. Thus, the concededly democratic weighted voting system followed at the AFM Convention cannot constitutionally be struck down on the ground that Congress could legitimately outlaw those methods for raising union dues which afford no representation to union members. Unless freedom of association no longer encompasses the right of employees to self-organization and union members, unlike other citizens, are to be regarded as mere wards, unable to govern themselves except under the benign tutelage of outside authority, the decision below cannot be reconciled with the First Amendment.

CONCLUSION

By reason of the foregoing, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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APPENDIX A

Statutory and Constitutional Provisions Involved

United States Constitution:

Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 *et seq.*, 29 U.S.C. § 401 *et seq.*:

TITLE I:

Sec. 101(a)(1), 29 U.S.C. § 411(a)(1):

> "*Equal Rights.*—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

Sec. 101(a)(3), 29 U.S.C. § 411(a)(3):

> "*Dues, Initiation Fees, and Assessments.*—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except—
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> "(A) * * *

"(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization."

TITLE IV:

Sec. 401(e), 29 U.S.C. § 481(e): "In any election required by this section which is to be held by secret ballot • • • [e]ach member in good standing shall be entitled to one vote. • • • The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title."

Sec. 401(f), 29 U.S.C. § 481(f): "When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers."